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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. ANA VANESSA MEJIA, Defendant and Appellant.	A122163 (Solano County Super Ct. No. FCR243166)

After her motions to suppress evidence were denied, defendant Ana Vanessa Mejia pleaded no contest to grand theft (Pen. Code, § 487, subd. (a)). Imposition of sentence was suspended and defendant was granted probation. Defendant contests the suppression rulings, arguing that she was being unlawfully detained when she began making incriminating statements. We hold that no detention occurred and affirm the order for probation.

I. BACKGROUND

According to evidence at the preliminary hearing, defendant was working at a check cashing store in Vacaville when it was robbed on the morning of June 2, 2007. Vacaville Police Officer Kevin O'Connell responded to defendant's 911 call. Defendant told him that an individual accosted her at the back door when she was taking out some garbage, put a gun to her head, and forced her back into the store. She said that the intruder hit her twice on the back of the head with a hard object, took money from the store, and left.

The incident was videotaped on the business's surveillance cameras.[1] O'Connell testified that the tape showed defendant make a cell phone call, and grab a plastic garbage bag in the store lobby. She was next seen being pushed into the lobby by a person wearing a ski mask and holding a semiautomatic pistol. She pulled money out of a cash drawer and put it in a plastic shopping bag the robber held. She was next seen opening a safe in the back office, and putting more money in the bag. The robber hit her twice on the back of the head with the gun. O'Connell said that the blows seemed to be "extremely light," "more of . . . a push with the gun and not a full-blown strike," and that defendant "actually kind of braced herself in order to get hit." Approximately $19,000 was stolen.

O'Connell went to the hospital where defendant was taken, spoke to her parents, and asked them to bring her to the police station for a further statement. The family went to the station, and defendant was taken to an interview room where she was initially questioned by O'Connell and Officer Gary Anderson. The videotape of this portion of the interview shows Anderson entering the room after about 18 minutes of questioning by O'Connell, and taking over the interview about seven minutes later. After about 10 minutes of questioning by Anderson, defendant admitted that her boyfriend had planned the robbery and that she knew it was going to occur.

O'Connell and Anderson left the room, and when the interview resumed defendant was questioned by Detective Vince Nadasdy.[2] Anderson testified that, when he returned to the room during the break in the questioning, defendant asked him whether she could leave. Anderson told her she could leave, but said that he "would appreciate it if she would stick around, because Detective Nadasdy was on his way in and she agreed to stick around to talk to him." When Anderson introduced Nadasdy to defendant, Anderson told

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[1] The tape was admitted into evidence; we have not reviewed it.

[2] The videotape of the first portion of the interview with O'Connell and Anderson was admitted into evidence as defendant's exhibit A; the videotape of Nadasdy's portion of the interview was admitted into evidence as People's exhibit 1. We have reviewed the tape of the first portion of the interview, when the detention allegedly occurred.

her that she was not under arrest and that she was free to leave. Defendant asked, "So, if I leave now, can we talk later?" Anderson replied, "Well, that's up to Detective Nadasdy. That's what he's going to talk about with you." Anderson left the room shortly thereafter, and Nadasdy questioned defendant for 35 to 40 minutes. During this portion of the interview, defendant kept saying, "I shouldn't have let it happen." Defendant was not arrested; when the interview concluded, she went home with her parents.

Defendant moved at the preliminary hearing to suppress her statements to the police as the fruits of an illegal detention. Defendant argued that the unlawful detention occurred "when the interrogation turned accusatory" during Anderson's questioning. The prosecution conceded that reasonable suspicion justifying a detention did not exist at that point in the interview, but argued that no detention occurred. Defendant admitted that her statements to Anderson in the first part of the interview created a reasonable suspicion that would have justified her detention during the second part of the interview when she was questioned by Nadasdy, but argued that all of the incriminating statements had to be excluded as fruit of the illegal detention.

Defendant characterized Anderson's portion of the interview as "ten accusatory minutes of interrogation." Anderson told defendant that the circumstances of the robbery were suspicious for a number of reasons. He said that he wanted her to take a computer voice stress analyzer test, which was like a lie detector test. He said that she did not have to take the test, but that it would show whether she was telling the truth. He said that the robbery looked staged. The robber appeared to be the same size as her boyfriend, and did not hit her very hard with the gun. She had violated store policy by taking out the trash while working alone,[3] and the robber just happened to be at the back door when she did so. After Anderson added that the police could determine the location of the recipient of her cell phone call, defendant made her first admission.

[3] This point was made by O'Connell, who stayed in the room after Anderson took over.

The magistrate denied the motion to suppress, noting that defendant "arrived voluntarily at a police station, knowing she was going to talk about this crime," and finding "the fact that the police had concerns about her statement and began to question her about it, and then ultimately to become accusatory . . . did not convert that appearance by the defendant at the police department, into a detention." The detention argument was renewed in superior court via motions to set aside the information (Pen. Code, § 995), and to suppress (Pen. Code, § 1538.5, subd. (i)), both of which were denied.

II. DISCUSSION

"Police contacts with individuals may be placed into three broad categories ranging from the least to the most intrusive: consensual encounters that result in no restraint of liberty whatsoever; detentions, which are seizures of an individual that are strictly limited in duration, scope, and purpose; and formal arrests or comparable restraints on an individual's liberty. [Citations. . . .] Consensual encounters do not trigger Fourth Amendment scrutiny. [Citations.] Unlike detentions, they require no articulable suspicion that the person has committed or is about to commit a crime." (*In re Manuel G.* (1997) 16 Cal.4th 805, 821 (*Manuel G.*).) It is "[o]nly when the [police], by means of physical force or show of authority, in some manner restrain[] the individual's liberty [that] a seizure occur[s]." (*Ibid.*)

"Although there is no 'bright-line' distinction between a consensual encounter and a detention . . . 'the police can be said to have seized an individual "only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." ' " (*People v. Verin* (1990) 220 Cal.App.3d 551, 556 (*Verin*).) " 'The test is necessarily imprecise, because it is designed to assess the coercive effect of police conduct, taken as a whole, rather than to focus on particular details of that conduct in isolation.' " (*Ibid.*)

Because the evidence on the suppression motions was undisputed, the rulings on the motions are subject to our independent review. (*Ford v. Superior Court* (2001) 91 Cal.App.4th 112, 125 (*Ford*).)

As the *Ford* court observed in an analogous context: "The Fourth Amendment does not prevent a person from agreeing to accompany officers to the police station and remain there for interrogation. (See *In re Gilbert R.* [(1994) 25 Cal.App.4th 1121,] 1125-1126 (*Gilbert R.*) [no seizure where minor agreed to go to station for questioning]; *Craig v. Singletary* (11th Cir. 1997) 127 F.3d 1030, 1032-1034, 1040-1042 [no seizure where defendant went with police to station and stayed there five hours before probable cause developed for his arrest].) '[A] suspect's appearance at the station for some period of time might be by consent and thus no arrest nor any type of seizure whatsoever.' (3 LaFave, Search and Seizure (3d ed. 1996) § 5.1(a), p. 4 (hereafter LaFave).) The question is whether the consent was voluntary. [3 LaFave, *supra*,] at pp. 4-5.)" (*Ford*, *supra*, 91 Cal.App.4th at p. 125.)

In this case, there is no question that defendant went to the police station voluntarily—she was taken there by her family, and not asked to accompany the police as in *Ford* and the cases *Ford* discussed. (See *Ford*, *supra*, 91 Cal.App.4th at pp. 125-127 [discussing *Gilbert R.*, *supra*, 25 Cal.App.4th at p. 1125, and *People v. Boyer* (1989) 48 Cal.3d 247 (*Boyer*)].) Defendant also voluntarily consented to remain at the station beyond the point at which she was allegedly detained. She was thereafter told that she was free to leave, but chose to stay when Officer Anderson said he would appreciate it if she did so. Thus, the evidence did not disclose "any type of seizure whatsoever" prior to defendant's initial admissions. (3 LaFave, *supra*, at p. 4.)

The decisions in *Ford* and *Boyer* further support the conclusion that defendant was not detained before she incriminated herself. The defendant in *Ford* was held to have had a consensual encounter with the police prior to confessing, despite being kept in a locked interview room for seven hours and then subjected to highly coercive interrogation techniques. (*Ford*, *supra*, 91 Cal.App.4th at pp. 117-118, 120-121.) While defendant may not have displayed the " ' "*eager* cooperation" ' " of the defendant in *Ford* (*id.* at pp. 127, 128, italics added), neither did she endure anywhere near the same degree of police pressure. Nor was she subjected, like the defendant in *Boyer*, *supra*, 48 Cal.3d at page 268, "to more than an hour of directly accusatory questioning, in which [the officer]

repeatedly told [the defendant]—falsely—that the police knew he was the killer, had all the necessary evidence, intended to charge him with the crimes, and would prove his guilt in court. According to [the officer], they sought only to learn 'why' he had done it, in order to establish the precise degree of culpability. [¶] . . . [¶] Under such circumstances a reasonable person could only conclude that the police deemed him their sole suspect in a double murder and would restrain and formally arrest him if he tried to leave."[4]

The nature of the questioning here was different from that in *Boyer* and would have made a different impression on a reasonable person in defendant's position. Anderson did not state or imply that the police knew that defendant was involved in the robbery; he merely indicated that they had grounds for suspicion and ways of finding out the truth. The questions did not suggest that cooperation was required, only that resistance would be futile. The questioning was brief and, as defendant conceded below, "polite." The police did not physically restrain defendant or make any show of authority that restrained her liberty. (*Manuel G.*, *supra*, 16 Cal.4th at p. 821.) Under all of the circumstances, a reasonable person in defendant's position would have believed that she was free to leave before she began confessing. (*Verin*, *supra*, 220 Cal.App.3d at p. 556.)

The motions to suppress were correctly denied.

[4] *Boyer* was disapproved on another point in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, footnote 1.

III. DISPOSITION

The order for probation is affirmed.[5]

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Marchiano, P.J.

We concur:

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Margulies, J.

_____
Banke, J.

[5] We have denied the related petition for habeas corpus (A125094) by separate order filed this date.